IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 614 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MANIBEN DAHYABHAI PATEL - Appellant(s)
Versus
GOVINDBHAI DAHYABHAI PATEL & 1 - Defendant(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
..... for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1. This matter was listed before this Court on 19.07.2006. Since none appeared for the respondents matter was adjourned to today. Even today none appears for the respondents. Matter is, therefore, taken up for hearing.

2. By way of this appeal the appellant has challenged the judgement and award dated 29.12.1989 passed by Civil Judge (S.D.), & Ex-officio commissioner for Workmen's Compensation at Nadiad, in W.C. Case No. 64 of 1986

whereby the application was allowed.

3. The brief facts of the case are that the deceased was son of present appellant who was working as a driver on the tractor No. G.R.E. 7341 which was of the ownership of the respondent No. 1.

3.1 On 27.04.1986 at the instruction of respondent No. 1 deceased went to Mehsana with the said tractor and while returning from Mehsana. The tractor met with an accident and the son of the present appellant died. Therefore the present appellant claimed Rs. 78,876/- by way of compensation. The Trial Court after hearing the parties passed the aforesaid order.

4. Learned advocate for the appellant submitted that the Trial Court ought to have seen that Insurance Company is liable to idemnify insurer for all the liabilities of the insurer, as a result of which liability of penalty has also arisen under the Workmen's Compensation Act and hence Insurance Company is liable to pay the amount of penalty and interest.

4.1 He further submitted that Trial Court ought to have seen that Section 95 of the Motor Vehicles Act provides that a policy of Insurance Company shall cover any liability incurred, if arising under the Workmen's

compensation Act.

5. I have gone through the judgement and award of the Trial Court and I am of the view that the Trial Court has not applied the correct law in the case of ***Ved Prakash Garg Vs. Premi Devi and others reported in AIR 1997 SC 3854*** it is held that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner Sections 3 and 4A(3) (a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on insured employer under contingencies contemplated by Section 4-A (3) (b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner. In that view of the matter,

the finding of the Trial Court is not just and proper as the insurance company is required to pay the interest on the compensation and therefore the matter calls for interference from this Court.

7. In the premises aforesaid the appeal is partly allowed. The insurance company is liable to pay interest to the appellant on the amount of compensation from the date of the accident. The award of the Trial Court is modified accordingly. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*